

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION**

1:05CV226-1-V

1:92CR96-V

ERNEST LEON MYERS, Jr.,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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ORDER

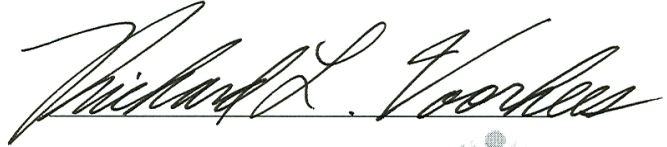
THIS MATTER comes before the Court for an initial review of Petitioner's Motion to Vacate, Set Aside, or Correct Sentence, filed May 31, 2005.

A review of Petitioner's criminal file indicates that he filed a previous motion to vacate (case no. 1:97cv350-2-V) which was denied by this Court on March 18, 1999. On August 16, 1999, the United States Court of Appeals for the Fourth Circuit affirmed this Court's denial of Petitioner's Motion to Vacate.

Under the Antiterrorism and Effective Death Penalty Act (AEDPA), "a second or successive motion must be certified . . . by a panel of the appropriate court of appeals" 28 U.S.C. § 2255 (1997). Therefore, the Petitioner must first certify his claim with the Fourth Circuit Court of Appeals before he can file his successive claim in the District Court.

THEREFORE, IT IS HEREBY ORDERED that Petitioner's Motion to Vacate, Set
Aside, or Correct Sentence is **DISMISSED without prejudice** as successive.

Signed: October 11, 2007

A handwritten signature in black ink, reading "Richard L. Voorhees". The signature is written in a cursive style with a horizontal line underneath the name.

Richard L. Voorhees
United States District Judge

